



## **Policy Brief**

### **The Inter-American Democratic Charter:**

### **Toward a Plan of Action**

#### **A Disturbing Prognosis for the Western Hemisphere**

Over the past 25 years, the nations of Latin America have built and sustained electoral democracies, while simultaneously undertaking wrenching economic reforms, and they have done so in a spirit of closer hemispheric cooperation and integration. Today, however, democracy is under stress. Elected governments have been unable to achieve adequate levels of sustained economic expansion and job growth; crime and corruption have spread relentlessly; and extraordinarily high levels of poverty and inequality continue unabated, or have worsened. In the words of former Peruvian foreign minister Diego Garcia-Sayan, “democracy has not reached the peoples’ stomachs.”

At a recent conference held at the University of British Columbia under the auspices of the Liu Institute for Global Issues, former Guatemalan foreign minister Eduardo Stein offered a disturbing prognosis for the region’s democratic regimes. Stein, who led the watershed electoral observation mission in Peru in 2000 that contributed to the unfolding of an authoritarian regime, observed that the challenges facing the region go much beyond the rise of the occasional autocrat to power or the conventional coup d’état. Deeper problems lie in adverse economic and social structures, and in persistent institutional and political dilemmas.

The future of democracy depends on whether the give-and-take of electoral politics, the compromises this occasions, and the rules of the game that make it possible, can produce the kind of policies and legislation—the real, effective changes in the way government works—that are necessary to produce sustainable and shared prosperity, overcome long-standing barriers to inclusion, and make meaningful improvements in the lives of the people. The public must be able to see the connection between improvements in their lives—or, at a minimum, the prospect their children will enjoy better futures—and the institutions and procedures of democratic politics. The people of Latin America cannot be expected to support democracies that cannot provide higher levels of prosperity, individual security, or integrity in public office.

So far, a clear majority of the region’s people—by a wider margin in countries like Uruguay and Costa Rica, and a narrower margin in countries like Brazil and Peru—remain committed to democracy. Yet persistent poverty, crime, corruption, and misery provide fertile terrain for leaders impatient with the give-and-take of democratic politics, contemptuous of the rules that make it possible, and eager to find quick solutions rather than lasting compromises. Once elected, such leaders often by-pass parliamentary institutions on the pretext of obtaining results infeasible within the niceties of democratic procedures. The desire for results is laudable, but it also provides a convenient excuse for the abuse of power and, more often than not, allows intemperate personal ambition to masquerade as providential leadership.



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President Alberto Fujimori in Peru used the counter-insurgency struggle with the Shining Path rebels as a pretext to close congress, suspend the constitution, and rule by decree in April 1992. This “autogolpe,” or presidential self-coup, was retroactively legitimated by a referendum that approved a constitution with expanded presidential powers—and a revocation of the constitutional provision that would have prevented Fujimori from running for a second term. Not satisfied with two terms, however, Fujimori violated his own constitution and ran for a third term in 2000 (firing key members of the nation’s supreme court who overruled him). President Jorge Serrano in Guatemala consciously emulated Fujimori’s autogolpe in 1993. Serrano also attempted to close congress and suspend key articles of the constitution. However, Serrano, unlike Fujimori, enjoyed only tepid public support and little military backing, and his “autocrat’s apprenticeship” ended in exile in Panama. It has been alleged (by sources at the highest level) outgoing Nicaraguan President Arnoldo Alemán contemplated martial law in November 2002 to block the inauguration of his successor, Enrique Bolaños. The Alemán government had engaged in massive corruption, using bribery to ensure a subservient legislature and compliant courts. Alemán is currently under house arrest.

Hugo Chávez followed Fujimori’s model, albeit by more constitutional means. He first attempted to seize power by a coup d’état in 1992, and, though he failed, he was able to parley his image as a plain-speaking critic of a corrupt status quo to win the presidency in 1998. He immediately called, and won, a referendum to convene a constituent assembly; secured an overwhelming majority in that body, in part by prohibiting his opponents from running under party labels; and then usurped the powers of the sitting congress. Chávez polarized Venezuelan political life and placed democracy in peril by his partisan constitutional engineering to concentrate power in the hands of the executive, his record of economic mismanagement and politicization of the armed forces, and his heavy-handed use of presidential decree authority to impose his political agenda. Chávez, like Fujimori, has an apprentice: Lucio Gutiérrez, a junior officer in the Ecuadorian military who professed his admiration for Chávez when he allied with the nation’s indigenous peoples to attempt to overthrow the elected government of Jamil Mahuad in early 2000. The effort failed, but like Chávez, Gutiérrez emerged as a voice of protest against the political establishment and in 2002 he won handily over a prominent member of the nation’s oligarchy in democratic elections.

In Haiti, the government of Jean-Bertrand Aristide stacked the electoral commission and then used it to inflate the vote for his Fanmi Lavalas party in May 2000 legislative elections so that his candidates would be spared constitutionally mandated runoff elections. Aristide hoped that a massive, if illegitimate, majority in the parliament would enable the president to amend the constitution and expand the powers of the executive. Corruption, widespread human rights abuses, and attacks on press freedom have intensified under Aristide’s despotic rule. However, the opposition to Aristide has also proven notoriously intransigent. The problem of elected leaders who behave like autocrats is often mirrored in the behavior of opposition groups. When Pedro Carmona, a leader of the Venezuelan opposition, briefly held power in April 2002, his inaugural act was to close the national assembly and dismiss the justices of the supreme court, the human rights ombudsman and the state attorney.

Perhaps no country presents a panorama more dire than Colombia, where drug cartels, guerrillas and paramilitary groups vie with the state for control over territory, resources, and political control in a fratricidal civil war that claims the lives of between 25,000 and 30,000 people every year. Efforts at constitutional reform in 1991 aimed at making the political system more open and competitive are widely regarded as unsuccessful, and peace talks with the guerrillas under the previous administration failed. President Alvaro Uribe has promised to rule with a “strong hand and big heart.” In practice, this meant he would negotiate only with groups willing to lay down their arms and embrace the democratic rules of the game. Yet, he advocates a stronger and less constrained executive, a weaker, unicameral congress, and proposes to submit these measures to a referendum.

The illusion of political stability and economic growth in Argentina under Carlos Menem unraveled when President Fernando de la Rúa resigned following an economic collapse at the end of 2001, a collapse not unlike the denouement of the government of Carlos Salinas in Mexico in 1994. Argentina faces the extraordinary challenge of electing a new government while recovering from an economic collapse.

If the domestic problems of the region were not enough, the post-9/11 war on terrorism has altered the balance between the rule of law, public deliberation, and the prerogatives of executive power within the United States and abroad. The reassertion of realpolitik makes the defense and promotion of democracy abroad considerably more difficult. Venezuela is a case in point. The Bush administration has sent mixed signals to the Venezuelan government and opposition. One group within the administration, veterans of the contra wars in Central America, sees the fight between Chávez and the opposition through the lens of anti-communism and US-Cuba relations, while another focuses on the importance of oil supplies in the context of the war in Iraq. The defense of democracy is reduced to an afterthought. Indeed, in the context of the war on terrorism, there is a danger that the entire agenda of promotion and defense of democracy will be relegated to the same diminished status.

In retrospect, the meeting of the 34 democratically elected leaders of the Western Hemisphere assembled for the Summit of the Americas in Quebec City in April 2001 was held during a unique moment in history. For a brief time, between the crucial transitional elections in Peru and Mexico and the terrorist attacks that were to come, the leaders were able to focus their attention on writing a democratic clause into their declaration and call for the negotiation of an Inter-American Democratic Charter. The Charter was hurriedly signed on 9/11, the day that, as the cliché goes, “changed everything.” Its “wondrous phrases,” as Bob Pastor puts it, now seem at variance with the harsh new realities of the Western Hemisphere. Can the Charter be made to work?

### **Making the Charter Work: Problems, Responses, and Coalitions**

The Inter-American Democratic Charter is not a treaty or legal instrument but a resolution of the General Assembly of the Organization of American States. As such its application depends upon the collective political will of the member states to enforce it through a process of multilateral negotiation. Such negotiations will tend to replicate the process that led to the creation of the Charter in the first place. Applications of the Charter will be triggered by a *problem*, efforts will be made to match the problem with an appropriate policy *response*, and *coalitions* will emerge to promote alternative solutions.

In the case of the negotiation process that led to the Charter, the *problem* lay in the implementation of OAS Resolution 1080, adopted on June 5, 1991, which called for a collective response to situations involving the “sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically elected government.” Resolution 1080 was followed by the “Washington Protocol,” which made it possible for a country to be suspended from membership in the OAS if its “democratically constituted government has been overthrown by force.”

Resolution 1080 and the Washington Protocol were watershed developments in hemispheric efforts to promote and defend democracy, but they had an important blind spot: they addressed the threat of a conventional military coup d'état and neglected the more insidious and subtle threats to democracy that began to spread in the 1990s. The most complex of these was the abuses of democratic institutions by democratically elected leaders, and the paradigmatic example occurred in Peru when President Alberto Fujimori suspended the constitution, closed Congress, and ruled by decree in 1992.

Throughout the 1990s policy makers grappled with how to *respond* to crises such as the ones in Peru, Haiti, Guatemala, and Paraguay. A critical juncture occurred with the report of the Electoral Observation Mission in Peru, led by Eduardo Stein, which was tabled on the OAS agenda during the General Assembly held in Windsor on June 4-6, 2000. Unable to agree to invoke Resolution 1080, the General Assembly reached a compromise: a High Level Mission would visit Peru and make recommendations for democratic reforms.

The Mission created “dialogue round tables” that brought the government and opposition together, and which served as the vehicle for an orderly democratic transition after President Fujimori fled Peru. The transitional government led by Valentin Paniagua proposed the creation of a Democratic Charter to reinforce the Inter-American system for the collective defense of democracy.

The idea of a Charter might have been ignored and forgotten had it not been taken up by the organizers of the Summit of the Americas in Quebec City, which instigated the negotiations leading to the signing of the Charter in September 11, 2001. The negotiation process that culminated in the Charter was led by a *coalition* of countries including Peru, Canada, Costa Rica, Argentina, and Mexico.

## Closing Loopholes in the Charter

Applications of the Charter will require similar confluences of problem, response, and coalitions. The problems that policy makers have grappled with throughout the 1990s have not disappeared. Although the Charter broadens the language of Resolution 1080 to include “unconstitutional alterations of the constitutional regime”, it does not specify what counts as an “alteration.”

It is clear that an alteration to the constitutional order has occurred when elections are held that do not meet minimal international standards of the right to vote, access to the media, absence of physical coercion or intimidation, a secret vote and honest count, and a independent appeals process. Other cases are less clear.

Should the premature and illegal termination of the tenure in office of a democratically elected official by another elected or non-elected official be considered an “alteration” of the constitutional order? Or, what about the stacking of courts? Another problem concerns the interference by military officers in the jurisdiction of elected officials. Finally, should the notion of “unconstitutional alteration” cover the use of public office to silence, harass, or disrupt the normal and legal activities of members of the political opposition, the press, or civil society?

The Charter is careful to stipulate that it is only concerned with alterations in the constitutional order that “seriously impairs the democratic order.” The determination as to whether a violation impairs the democratic order requires political judgment, and cannot be resolved a priori. However, political judgments can be improved by access to the best available evidence. Whereas reliable measures of economic performance are routinely gathered by international financial institutions and provide benchmarks for the assessment of performance on a range of policy dimensions, nothing comparable is available to policymakers in the area of political performance and democratic reform. Moreover, extensive research is necessary to provide analytical and empirical foundations for assessing the impact of alterations in the constitutional order on democratic regimes.

*To achieve these ends, we propose a Virtual Policy Network: Such a network would provide expert advise on how to define and measure progress or backsliding on democratic reforms, to examine the events that might fall under the rubric of an “unconstitutional interruption or alteration of the democratic order,” and to offer insight into when such events might impair democracy.*

## The Charter's Catch-22

Colombian political scientist Fernando Cepeda says the “Charter protects incumbents more than democrats.” Here’s why. The Charter can only be applied when the Secretary General or the Permanent Council of the OAS determines that a situation has arisen in a country “that may affect the development of its democratic political institutional process,” yet such a determination cannot be made unless, “with prior consent of the government concerned,” the Secretary General can visit a country and make a report. In other words, a government that does not want the Charter to be applied can simply refuse to invite the Secretary General to make an assessment.

The OAS is a club of states loath to criticize one another. There is no role for the opposition or civil society—whether domestic or international—in the implementation of the Charter. There is no early warning system, no independent or autonomous agencies to sound the alarm when a problem appears on the horizon. A more inclusive process of civil society consultation could stimulate the OAS to address problems when member states are reticent by monitoring events, reporting on them when they threaten to impair democracy, and lobbying their respective governments to address the problem through the OAS where appropriate.

Although the Charter extols the importance of civil society it provides no mechanism for consultation with non-governmental organizations. There is nothing, of course, to prevent such mechanisms from being developed parallel to the Charter and outside the OAS. The United Nations Commission on Human Rights receives regular reports from human rights organizations.

One way of enhancing the effectiveness of the Democratic Charter would be to develop an institute to commission thematic or country reports on progress or backsliding in the democracies of the Americas. Regular reports would serve as a way to bring the spotlight of international publicity to bear on problems, to provide encouragement and benchmarks for governments undertaking democratic reforms, and would also serve as an early warning mechanism for the Inter-American system. Such a system could work in partnership with the Unit for the Promotion of Democracy.

*We propose an Inter-American Democratic Institute to commission thematic or country reports on progress toward the implementation of the goals of the Charter. The Institute would provide a vehicle for civil society involvement in deliberations on the application of the Charter.*

### “Friends of the Charter”

The Inter-American community has not yet learned to harness the power of civil society and public diplomacy to advance and defend democratic rights and freedoms. In an era of instant communication, closer economic integration, and transnational linkages across civil societies and states, public diplomacy often requires unconventional tools, new partnerships, and innovative strategies. The successful negotiation of the Charter was the result of political leadership that was able to match an innovative solution (the Charter) to a long-standing problem (difficulty applying Resolution 1080), and get the solution onto the policy agenda by moving from the crisis in Windsor to the Summit of the Americas in Quebec City. It was also the result of the active engagement of civil society, and success in implementing the Charter will require deeper and more sustained public involvement.

As in the case of the Convention to ban landmines, the achievement of the goals of the Democratic Charter will require novel partnerships between states and non-governmental organizations, as well as coalitions of like-minded states, often operating both within and outside normal diplomatic channels and mechanisms. To move from the dead letter of a Charter to the development of a proactive Plan of Action, we call for policy leaders with experience and vision who can inject initiative and energy from outside the OAS and the Summit process.

As a final recommendation, we propose the formation of an informal group of “*Friends of the Charter*,” composed of former officials in member countries, eminent persons, representatives of non-governmental organizations, and staff from multilateral development banks. This group would serve to spur states and international organizations to act within the framework of the Charter, both in the context of the OAS and in the broader the Summit of the Americas process.

## **The Venezuelan and Haitian Crises: Opportunities or Ill-Omens of the Future?**

The crises in Haiti and Venezuela highlight the need to act on the above recommendations. In both countries, popularly elected leaders have acted in defiance of the most basic constitutional principles that make democracy viable. Both are polarized between intransigent parties. On the one side, governments have used their popular mandate as a justification to act autocratically. On the other side, opposition groups have made maximalist demands for the ouster of the president ignoring the need for post-conflict coexistence with erstwhile adversaries. In both cases, the OAS has been actively involved, with repeated resolutions and declarations calling for dialogue and compromise. These calls have fallen on deaf ears, and progress toward a resolution has been slow or unperceivable. The Charter has not been explicitly invoked in either case, despite ample justification, because the leaders of both countries (and their immediate regional neighbors) have rejected the use of the instruments provided by the Charter, which they see as punitive.

The involvement of the OAS in Haiti and Venezuela, as well as the earlier experiences of Peru, Guatemala, and Paraguay, have created what OAS Assistant Secretary General Luigi Einaudi calls a “regional jurisprudence in the defense and promotion of democracy.” Yet there are limits to what the OAS can do. It can offer good offices and seek to reframe the issues. It can help shift attention from the legitimacy of Aristide or Chávez’s tenure to the need to reinforce the constitutional separation of powers, the rule of law, and respect for human rights. It can seek to ensure that the conditions in Venezuela and Haiti do not deteriorate to the point that free and fair elections cannot be held. And it can stress that human rights, the rule of law, and constitutional checks and balances are necessary to ensure the quality and sustainability of democracy regardless of the incumbent in office.

A more active role for civil society, academic policy experts, and former officials, not just in countries like Haiti and Venezuela, but throughout the hemisphere can help foster a climate supportive of the efforts to promote and defend democracy within the OAS. The Carter Center provides an admirable example of the remarkable contribution that can be made by a non-governmental organization in situations like Peru, and Venezuela. The Liu Institute’s niche is putting ideas into action, thus we focus on the research and policy foundation for strengthening the “jurisprudence of democracy defense and promotion” and connecting this to timely initiatives. The Virtual Policy Network would provide a forum for public deliberation on such issues as the meaning of a “constitutional, democratic, peaceful, and electoral solution” to the crisis in Venezuela. The Inter-American Democratic Institute would review institutional changes in cases like Venezuela under Chávez, or Haiti under Aristide, and would not hesitate to advance ideas that an official body could not. The “Friends of the Charter” could help then to steer the recommendations through the Inter-American system.

The Democratic Charter was the major achievement of the Quebec City Summit of the Americas. Making the Charter work as an effective instrument for the defense and promotion of democracy must be a priority in the Summit process. The recommendations outlined in this report are intended to provide concrete measures that could be undertaken toward that end.

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